

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

WILLIAM T. BUSICK

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:02CV483LS

CITY OF MADISON, ET AL.

DEFENDANTS

ORDER

This matter came before the court on a review of the docket, in light of the recent dismissal of the Plaintiff's interlocutory appeal by the Fifth Circuit. That review revealed several pending Motions, and the court's rulings on those Motions follow:

1. Motion to Dismiss Jed Womack as Defendant to Plaintiff's Amended Complaint/Motion for Substitution of Party/Motion to Name Defendants in Interest.

Each of these Motions relates to the death of Defendant Ted Womack, the former Administrator of the Madison County Detention Center. A Suggestion of Death was filed by the Defendants on October 27, 2005. Chuck McNeil has replaced Womack in his capacity as Administrator; therefore, in accordance with Fed. R. Civ. P. 25(d)(1), Chuck McNeil will be substituted for Ted Womack, insofar as Womack was sued in his official capacity.

2. Motion for Continued Service of Process. This Motion seeks service of process on Chuck McNeil, Brenda Perry, Mrs. Charles Esco, "Jane Doe" Cheers, an Arthur Thompson. Service is not necessary on McNeil, as he is automatically substituted as a party. *Coleman v. Aycock*, 304 F. Supp. 132, 138 (N.D. Miss. 1969). Esco, Perry, and Thompson have answered the Amended Complaint and submitted to the

jurisdiction of the court; therefore, service has apparently been effected on them. The court cannot issue a summons for "Jane Doe" Cheers, as this is not sufficient identification. However, in order to facilitate the disposition of this matter, counsel for the Defendants will be directed to report to the court as to whether any person was employed by the Madison County Detention Center during the period relevant to the Plaintiff's claims with the last name of "Cheers." If such a person can be identified, counsel for the Defendants will provide her full name and last known address where she may be served with process.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Dismiss Jed Womack as Defendant to Plaintiff's Amended Complaint, which is construed as a Motion for Substitution of Parties, the Plaintiff's Motion to Substitute Parties, Motion to Name Defendants in Interest, and Motion for Continued Service of Process are hereby **granted** in part and **denied** in part, as further explained above. Counsel for the Defendant shall report to the court on or before May 23, 2006, as to the identity of Defendant "Jane Doe" Cheers.

IT IS SO ORDERED, this the 20th day of April, 2006.

S/James C. Sumner

UNITED STATES MAGISTRATE JUDGE